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CITATIONS

827133—49

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. ——, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

BRIEF FOR THE UNITED STATES IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

STATEMENT

The purpose of this motion is to invoke the original jurisdiction of this Court to obtain an adjudication of the rights of the United States, as against the State of Texas, in the lands, minerals and other things underlying the Gulf of Mexico adjacent to the coast of Texas. The State of Texas opposes the granting of the motion on the grounds (1) that the Attorney General of the United States has no authority to institute this suit because the Congress has not, in the first instance, asserted the rights alleged against the State of Texas, and (2) that the interests of convenience, efficiency and justice will be better served by the bringing of the suit in

a district court, with customary appellate review, rather than as an original proceeding in this Court.

The State of Texas does not suggest the absence of a case or controversy requiring adjudication (cf. *United States* v. *California,* 332 U. S. 19, 24–26), nor does it question the right of the United States to seek a resolution of this controversy through judicial proceedings (cf. *United States* v. *Texas,* 143 U. S. 621). Its objections to the granting of the motion are limited to those set forth above. As we shall show, neither of these objections presents to the Court a reason for declining to entertain the proposed litigation.

I

The institution of this proceeding is within the authority of the Attorney General

In the assertion that the Attorney General has no authority to bring this suit because the Congress has not by specific enactment asserted the rights alleged against the State of Texas (Objections to Motion, pp. 2–4), the Court is being requested to reconsider certain arguments and matters which were heard and disposed of in *United States* v. *California,* 332 U. S. 19. In that case, the Court found that there was nothing in the failure of the Congress on two occasions to grant to the Attorney General specific authority to institute a proceeding of this character,[1] or

[1] S. J. Res. 208, 75th Cong., 1st Sess. (1937); S. J. Res. 83 and 92, 76th Cong., 1st Sess. (1939).

in the unconsummated efforts to obtain a "quit-claim" to the several coastal States of lands underlying ocean waters beyond low-water mark,[2] or in any other matter to which the Court had been referred, which might be construed in any way as a limitation upon the general authority[3] and duty of the Attorney General "to institute and conduct litigation in order to establish and safeguard government rights and properties." 332 U. S. at 26–29.

It is abundantly clear from what was considered and decided in the *California* case that a specific assertion by the Congress of the rights of the United States in and to the lands underlying the Gulf of Mexico adjacent to Texas is not a prerequisite to the institution of the litigation which the United States here seeks to bring.[4] The rights of the United States in the lands and resources underlying ocean waters beyond its

[2] H. J. Res. 225, 79th Cong., 2d Sess. (1946), which, following approval by the Congress, was vetoed by the President. 92 Cong. Rec. 10660. The veto was sustained. 92 Cong. Rec. 10745. See also H. R. 5992, 80th Cong., 2d Sess. (1948).

[3] 5 U. S. C. 291, 309.

[4] Certain measures now pending before the Congress, to which Texas refers (Objections to Motion, p. 4), are designed merely to provide for the control and disposition of interests which have already been held to be vested in the United States. These bills, S. 923 and H. R. 341, 81st Cong., 1st Sess., relate, respectively, to the control, management and development of submerged coastal lands and to the recognition of certain equities therein resulting from operations conducted prior to the decision in the *California* case.

shores relate to its position as a national sovereign and a member of the family of nations. *United States* v. *California*, 332 U. S. 19, 34–35. These rights are an inherent part of the external sovereignty of the United States and it is the duty of the Attorney General to institute such proceedings as may be necessary to protect these as well as all other rights and interests of the United States.

II

The circumstances of this controversy justify the exercise of the original jurisdiction of this Court

The second objection urged by Texas suggests that the interests of convenience, efficiency and justice would be better served if this proceeding were brought in a district court, with customary appellate review, rather than as an original proceeding in this Court (Objections to Motion, pp. 5–9). In this connection, Texas asserts that it will desire to introduce a great amount of testimony and written documents; and it is urged that this evidence, documentary and otherwise, could be adduced more easily before a federal district court in Texas. We submit that, wholly apart from the probable irrelevance of such evidence, there is no basis for the course of action suggested by the State.

It is, of course, true that the district courts of the United States now have concurrent original jurisdiction with this Court over suits brought by the United States against a State (28 U. S. C.

1251 (b) and 1345) and, as the State observes (Objections to Motion, p. 5), this Court has on occasion withheld the exercise of its original jurisdiction, remitting a cause to another forum in the interests of convenience, efficiency and justice. See *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 464–465. However, as a general rule, "the grant of concurrent jurisdiction implies that, in the first instance, the plaintiff shall have the choice of the court" (*St. Louis, B. & M. Ry.* v. *Taylor*, 266 U. S. 200, 208), and, it is submitted, any deviation from this rule should be predicated only upon circumstances which establish, beyond all question, that the interests of convenience, efficiency and justice would be better served by remitting the cause to some other forum.[5] Par-

[5] Compare the considerations which were found, in each instance, to be persuasive in the recent decisions of this Court involving the principle of *forum non conveniens*. *Williams* v. *Green Bay & W. R. Co.*, 326 U. S. 549, 554–560; *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 509–512; *Koster* v. *Lumbermens Mutual Co.*, 330 U. S. 518, 520–521, 531–532. Of particular significance are the Court's observations in those cases that "each case turns on its facts" (*Williams* v. *Green Bay & W. R. Co.*, *supra*, p. 557) and "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed" (*Gulf Oil Corp.* v. *Gilbert*, *supra*, p. 508. Moreover, *forum non conveniens* in the Federal courts is merely a doctrine relating to venue. See *Gulf Oil Corp.* v. *Gilbert*, *supra*, p. 507. Only the most drastic kind of situation, if any, should call for the application of like principles in denying to a plaintiff access to a court which both the Constitution and Congress have made available, and to require it to seek relief in a lower court, particularly where issues of such national importance are involved.

ticularly is this true where the original jurisdiction is invoked by the United States in a suit against a State on a matter of high national interest.

Moreover, the considerations mentioned by the State of Texas present no basis for an assumption that the interests of convenience, efficiency and justice would be better served by remitting this proceeding to a district court. True, the State suggests that it desires to introduce "a great amount of testimony and written documents." But it is highly doubtful whether there is any relevant evidence relating to the matters outlined by Texas which may properly be introduced. The evidence which Texas wishes to introduce seems to be comparable to the elaborate materials which the State of California sought unsuccessfully to present in the form of evidence in connection with its 800-odd page answer in *United States* v. *California;* and there is no reason to believe that the principal relevant facts here will not be susceptible of judicial notice as they were in the *California* case. In the circumstances, it would be a disservice to the administration of justice to require this case to be brought in a district court for the "consideration of a great amount of testimony," which is not called for in the determination of the basic issue raised by the complaint. And if the need for resolving any subsidiary factual issues should arise after the

basic rights in the off-shore lands have been adjudicated, such subsidiary determinations can be made in accordance with machinery comparable to that which is now being worked out in connection with the *California* case. But there is no warrant whatever for requiring the basic issue to be adjudicated in the first instance by a district court in Texas. Indeed, the possibility that such a district court might, in its discretion, permit the introduction of evidence of the type that California attempted unsuccessfully to present in the resolution of the basic issue in this Court, might result in protracted hearings and delays over a long period of years, with the consequence that the interests of convenience, efficiency and justice would be defeated. There is no reason whatever why the basic legal issue here cannot be decided by this Court in the exercise of its original jurisdiction, as was done in the *California* case.

Furthermore, there are compelling reasons why this Court should exercise its original jurisdiction in this proceeding. The controversy to be resolved involves the conflicting claims of the national government and of a State of the Union as to the extent of the rights and interests which may be exercised by the respective parties as incidents of their sovereignty. The issue is therefore one of first importance in the field of federal-state relations. It is not a dispute of

minor significance which, under the revision of Title 28 of the United States Code (secs. 1251 (b) and 1345) approved June 25, 1948, Pub. Law 773, 80th Cong., 2d Sess., should be heard as an original matter by the district courts without the necessity of burdening this Court.

The basic issue in this controversy is whether the rule announced by this Court in *United States* v. *California,* 332 U. S. 19, is applicable to the lands underlying the Gulf of Mexico adjacent to Texas. The question is essentially one of law and one which, it is believed, can be determined by this Court without the taking of testimony. As we have heretofore indicated (Statement in Support of Motion, p. 4), officials of the State of Texas have refused to recognize the rights of the United States in the lands in question and are continuing the conduct of certain activities in violation of those rights. It is apparent, therefore, that only a decision of this Court on the basic issue will resolve the conflict between the parties. The matter should therefore be considered under the procedure which will permit the rendering of such a decision at the earliest possible time. In the circumstances, the exercise by this Court of its original jurisdiction would seem clearly to provide the procedure which, from the standpoint of expedition, convenience, efficiency and justice, is more satisfactory than any available in any other court. It is unthinkable

that the original jurisdiction of this Court, deliberately provided for by Congress in cases of this character, should be withheld in a controversy of such importance.

The motion for leave to file the complaint should be granted.

Respectfully submitted.

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MARCH 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949